

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 21-03016-01-CR-S-BCW
)
)
PATRICIA ASHTON DERGES,)
)
Defendant.)

ORDER

Before the Court are three motions filed by Defendant: (1) Motion for Leave to File Combined Motion For Leave to Depose Witness and to Compel [] Out of Time (doc. 55); (2) Combined Motion for Leave to Depose Witness and Compel Government Production (doc. 56); and (3) Motion for Leave to File Exhibits A Through D of Defendant's Combined Motion for Leave to Depose Witness and To Compel Under Seal (doc. 57). Upon review, the motions will be **DENIED**.

As Defendant has been previously advised, pursuant to Local Rule 37.1, no discovery motions can be filed until: (1) the parties have met and conferred in good faith by telephone or in person; and (2) if discovery issues remain unresolved after the attorneys have conferred, the parties must submit to a telephone conference with the judge.¹ The rule requires the attorney for the prospective moving party to "do more than merely write a demand letter" and specifically prohibits the filing of a written discovery motion until after a telephone conference is held. *Id.* Here, the Motion for Leave to File Combined Motion For Leave to Depose Witness and Compel [] Out of Time (doc. 55) provides no evidence that defense counsel has conferred or attempted to confer by

¹ Local Rule 99.0 makes Local Rule 37.1 applicable to criminal proceedings.

telephone or in person with opposing counsel regarding this matter. Even assuming the parties conferred, when discovery issues remained unresolved after conferring, counsel for the prospective moving party must arrange a telephone conference before the judge. L.R. 37.1(a)(2). As stated, the rule specifically prohibits the filing of a written discovery motion until after a telephone conference is held. Here, Defendant filed the motion prior to contacting chambers to schedule a telephone conference on the discovery dispute regarding compelling the Government's production of witnesses for depositions. Accordingly, the Motion for Leave to Depose Witness and Compel [] Out of Time (doc. 55) is **DENIED without prejudice** for noncompliance with Local Rule 37.1.

Defendant's Combined Motion for Leave to Depose Witness and Compel Government Production (doc. 56) is also **DENIED without prejudice** as it was filed without leave. Counsel is advised that when seeking leave to file a motion, the proposed motion should be filed as an attachment to the motion for leave and not filed as a separate motion, since leave has not been granted.

And, based on the foregoing, the Motion for Leave to File Exhibits A Through D of Defendant's Combined Motion for Leave to Depose Witness and To Compel Under Seal (doc. 57) is **DENIED as moot**.

IT IS SO ORDERED.

/s/ David P. Rush _____
DAVID P. RUSH
UNITED STATES MAGISTRATE JUDGE

DATE: September 9, 2021